

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

07 Cr. 177 (DAB)

RAGHUBIR K. GUPTA,

Defendant.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RAGHUBIR K. GUPTA, being duly sworn, deposes and says, under the penalties of perjury, as follows:

1. I am the defendant in the above-captioned case and I am scheduled for retrial before this court on February 18, 2014. I make this motion to recuse the court, pursuant to 28 U.S.C. §144 and §455(b)(1), on the basis of my good faith belief that the court has a personal bias or prejudice against me.

2. Section 144 of Title 28 provides that a movant on such a motion must provide an affidavit stating “the facts and the reasons for the belief that bias or prejudice exists” Section 455(b)(1) states that a judge should disqualify him or herself where, *inter alia*, “he has a personal bias or prejudice concerning a party”

3. The bases for my belief that the court holds a personal bias or prejudice against me include the pattern of consistent denials of any relief I have requested:

a. On November 12, 2008, the Court, in its Order denying the *Fatico* Hearing, stated “. . . that none of the approximately 600 applications were

approved. . .” There was no evidence to support that conclusion. It was based solely on the representation by the government;

b. On February 19, 2009, the court denied my Rule 33 motion for a new trial based on information that a witness committed perjury, describing it as made “at the eleventh hour” and faulting me for “choos[ing] not to review the documents until after the conviction and after the court’s ruling on [his] request for a *Fatico* hearing”;

c. On November 11, 2009, the Court sentenced me to 51 months imprisonment and rejected all of my arguments for departure or variance from the guidelines. Additionally, the Presentence Report concluded that my guideline level was 16. The Court increased it to a Level 22;

d. On July 26, 2010 the Court denied my motion for a new trial even though the Court’s courtroom deputy filed an Affidavit that he improperly asked, at the Court’s behest, members of the public to leave the courtroom during jury selection.

4. On June 17, 2011, after an *en banc* rehearing, the Court of Appeals reversed my conviction and ordered a new trial on the ground that the public had been improperly excluded from the jury selection for my trial.

5. Because the Court has so consistently ruled against me on applications I have made, and because the reversal of my conviction was based on the Court’s conduct, I believe the Court is prejudiced against me and cannot preside fairly at my retrial, and there would be, at the very least, an appearance of partiality.

6. Since the trial was relatively short, a change in the presiding judge will not entail waste or duplication of judicial resources.

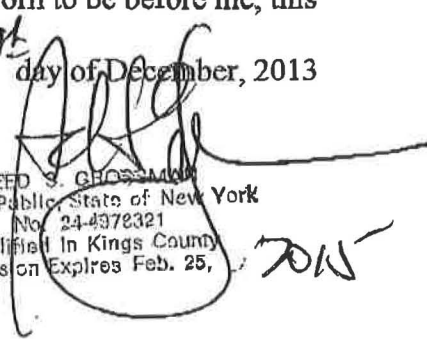
7. I believe the Court has acted like a prosecutor in the courtroom.

WHEREFORE, for the reasons presented your deponent prays for an Order recusing Your Honor and referring the case to another judge, and for any further relief as this Court deems just and proper.


RAGHUBIR GUPTA

Sworn to be before me, this

26th day of December, 2013


REED S. GROSSMAN
Notary Public, State of New York
No. 24-4972321
Qualified in Kings County
Commission Expires Feb. 25, 2015